IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1610 OF 2005

M/s. Manik Industrial Engg. Ltd.
& Anr. ...Petitioners.

V/s.

The Union of India & Ors. ...Respondents.

Mr.S.P.Bharti for the Petitioners.
Mr.V.H. Kantharia with Mr.H.V.Mehta for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 13th July, 2005.
P.C.:

1. **Rule.** Rule made returnable after forthwith. Heard the learned counsel for the Petitioners and for the Respondents. The learned counsel for the Respondents waives the service. By consent taken up for final hearing at this stage.

2. By this Petition, the Petitioners are challenging the order dated 7th October, 2003 passed by CESTAT, refusing to entertain the Appeal on the ground that the Commissioner of Central Excise (Appeals) has dismissed the Appeal on the ground that it is time barred. However, on a perusal of the order passed by the Commissioner of Central Excise (Appeals) dated 30th September, 2002, it is clear that the Commissioner of Central Excise (Appeals) has also decided the matter on

merits and in the last portion of the order, the Commissioner has observed that the Appeal of the Appellant was time barred.

3. The learned counsel for the Petitioners brought to our notice the judgment of Supreme Court in the case of **Ganesh Santa Ram Sirur v. State Bank of India & Anr. 2005 Volume 1 SCC Page 13** wherein the Supreme Court has clearly held that if the time barred Appeal is heard and decided on its merits, then the delay is presumed to have been condoned.

4. Under the aforesaid facts and circumstances, we find that the CESTAT ought not to have rejected the Appeal only on the ground that it is time barred. The CESTAT should have decided the matter on its own merits. Under the circumstances, we do hereby quash and set aside the order dated 7th October, 2003 of CESTAT and also the subsequent order and remand the matter back to CESTAT to hear the aforesaid Appeal No.E/263 of 2003 strictly on its own merits in accordance with law. The CESTAT should dispose of the same as expeditiously as possible. Rule is accordingly made absolute.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)